

U. S. PTO Customer No. 25280

Case #2171A

REMARKS

Claims 12-16, 22, 23, 26, 28-30, 140, and 144-146 were pending in the application. Claims 13, 140, and 144-146 have been canceled. Claims 12, 14, 15, 16, 22, 23, and 26 have been amended. No claims have been added. Thus, claims 12, 14-16, 22, 23, 26, and 28-30 remain subject to continued examination. Each of these claims is believed to be in condition for allowance. Accordingly, an action to that effect is respectfully requested at this time.

CLAIM OBJECTIONS:

Claim 16 was objected to for depending from both claims 1 and 12 and since claim 1 was canceled. The dependency to canceled claim 1 has been eliminated. Applicants have also corrected a similar dual dependency in claim 26. Applicants respectfully submit that the corrections render moot any continued objection.

OBVIOUSNESS REJECTIONS:

Independent Claim 12 and claims 13-16, 22, 23, 26, and 28-30 which depend from claim 12 all were rejected under 35 U.S.C. 103(a) as being obvious over Higgins '857 or Higgins '968 in view of EP 048 986 to Porter et al. and in further view of EP 309 816 to Turner et al. Continued rejection on this basis is respectfully traversed and reconsideration is requested at this time.

Independent claim 12 (and thus all claims depending therefrom) require the following three elements:

1. A carpet tile,

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2. A primary carpet having a face weight less than or equal to about 15 oz/yd², and
3. A cushion layer comprising a layer of polyurethane foam having a weight of about 2.72 – 8.24 oz/yd² and density less than about 10 lbs/per cubic foot.

As best understood, this combination of features does not appear to be taught or suggested by the art of record. Thus, the art does not appear to support a *prima facie* case of obviousness.

The Office Action notes that Higgins '857 teaches a cushion layer of about 10–60 oz/yd² and that Higgins '968 teaches a density of 12-20 lbs./per cubic foot. As best understood, the Office Action relies upon Turner as teaching a foam cushion layer for a carpet may range between 5 and 500 oz/yd² and then draws the conclusion based on this teaching that it would have been obvious to modify the carpet tiles of Higgins '857 and '968 to incorporate a cushion layer with the claimed polymer weight.

In order to more clearly distinguish the claimed invention from the cited art, the claims have been amended to recite that the layer of polyurethane foam has a weight of about 2.72 – 8.24 oz/yd² and a density less than about 10 lbs./per cubic foot. Such claims are supported by the description at, for example, pages 47 and 48 of specification as filed.

As regards the outstanding rejections, Applicants respectfully submit that the cited art does not teach or suggest the use of polyurethane cushion layers with the mass per unit area and density levels as claimed in a carpet tile. To the contrary, the evidence of record indicates that in

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constructing a carpet tile, higher densities and mass per unit area levels have previously been considered necessary.

Applicants respectfully refer the Examiner to teachings set forth in EP 309 816 to Turner et al. As best understood, this reference is directed various urethane backed textiles, including carpet. The statement apparently relied upon in the Office Action is found at page 5, lines 35-36 and reads as follows: "The amount of polyurethane-forming composition used can vary widely, from 5 to 500 ounces per square yard depending on the characteristics of the textile" (emphasis added). The next several sentences specifically address carpet tile and state as follows:

For making carpet tile, for example, relatively high amounts of the composition are used. Preferably from 10 to 200, more preferably from 30 to 120 ounces of polyurethane-forming composition are used per square yard of textile.

Thus, in addressing the formation of carpet tile, both the primary reference (Higgins '857) as well as the secondary reference to Turner advocate a lower limit of 10 oz/yd² for the urethane layer. As best understood, the Higgins '857 and Turner references were prepared by entirely different entities. The fact that two different entities independently identified a lower limit of 10 oz/yd² for the urethane layer in a carpet tile is respectfully submitted to be evidence regarding appropriate lower limits in such constructions. This is particularly true in light of the exceedingly broad range taught by Turner and its selection of the precise lower limit also taught by Higgins '857.

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Even if, for the sake of argument, it were considered somehow obvious to use a lightweight cushion as claimed, it is respectfully submitted that there is no support within the art of record for a carpet tile combining such a cushion layer with a primary carpet having a face weight less than or equal to about 15 oz/yd² and utilizing a polyurethane foam with a density less than about 10 lbs/per cubic foot. To the contrary, the specific teachings in Higgins '857 as well as Turner and Porter et al. would lead one to believe that substantially higher cushion weights are required. Specifically, in the examples of Porter et al. which the Examiner relies upon, the 14 oz. fabric is paired exclusively with foams applied at extremely high weights in excess of 40 oz/yd². Of course, this is substantially higher than the upper limit of about 8.24 oz/yd² presently claimed. Moreover, the examples of Porter et al. are directed to carpet rather than to carpet tile. Finally, the teachings of Higgins '968 indicate that foam density levels of at least 12 pounds per cubic foot are desired for a carpet tile.

It is fundamental that the art must be considered in its entirety—including portions that would lead away from the claimed invention. In the present case, the cited art advocates weights and densities of cushioning foam that are far in excess of the claimed levels. Moreover, the only piece of art that discloses yarn face weights within the claimed range also pairs such face materials with much higher weight backings and does not appear to be directed to tile. Thus, the present invention appears to depart substantially from the cited art relative to at least three different variables. Applicants respectfully submit that such departure from cited art is strong evidence of nonobviousness.

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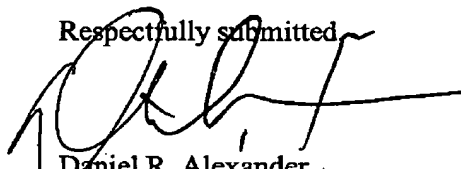
Claims 140 and 144-146 were rejected under 35 U.S.C. 103(a) as being obvious over Higgins '857 or Higgins '968 in view of Porter et al. In order to progress prosecution, each of these claims has been canceled so as to obviate any continued rejection on this basis.

CONCLUSION:

In light of the claim amendments and arguments set forth above, Applicants respectfully submit that all claims are in condition for allowance at this time. While an attempt has been made to address all outstanding issues, to any extent that one or more issues remain, the undersigned respectfully requests a telephone conference to resolve such issues.

September 16, 2004

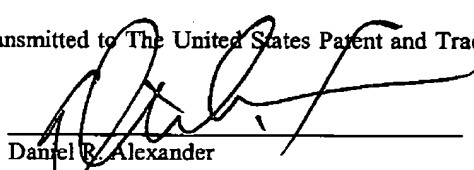
Respectfully submitted,



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CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this correspondence is being transmitted to The United States Patent and Trademark Office at 703-872-9306 on September 16, 2004.



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